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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,296	02/27/2004	Timothy A. Otterlee	R122 1020.2	7621

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

MAIL DATE	DELIVERY MODE
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11/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,296

Applicant(s)

OTTERLEE ET AL.

Examiner

Frank Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-37 is/are allowed.
- 6) ☒ Claim(s) 1, 3-6 and 9-30 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Sept 17, 2007 has been entered.
2. Claims 1-6 and 9-37 are pending, with claims 7 and 8 having been canceled.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 4-6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (US 6,270,093) in view of McCue et al (US 6,513,817). Johnson teaches a cart arrangement having a utilitarian theme, including a molded plastic body portion (6, 52) having a front facing panel (front surface of 6) coupled to the body portion adjacent a front of the seating area and a rear of the basket, the body portion defines a seat portion (40, 42, 44, 46) in at least one of which (42) a rider may sit facing forward (due to the space laterally of 40), a basket (4/8) fixedly attached to the body, and which may be made from a molded plastic material or a metallic material (col. 4, lines 49-50), the basket having first and second sides, as well as a bottom which is positioned forwardly of the seat, and wherein at least a substantial portion of the seat portion (e.g., 44, 46) is located above the height of the basket bottom, the seat portion including a rear wall (e.g., rearwardly facing portion of 46), left and right sides, and a front portion (note figure 5, forwardly of 40), the cart including a frame (18, 32) coupled to the molded body, and a plurality of wheels (pairs 12, 14, and 34). The reference to Johnson et al. fails to teach the molded portion as having a basket portion which receives a portion of the basket in a covering relationship. McCue et al. teach a shopping cart arrangement which includes a molded portion (23, 24, 25, 28) including both a seat portion (23, 24, 25) and a further portion extending longitudinally therefrom (28) having a pair of sides which cover at least a portion of the respective sides of a

Art Unit: 3618

basket (12). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the molded portion (52) of Johnson et al. with a longitudinally extending further section which extends beyond the seat portion to cover at least a portion (e.g., the lower portions) of respective sides of the basket, as suggested by the longitudinally extending portion of the molded body of McCue et al., for the purpose of presenting a visually unified appearance (i.e., visual continuity between the basket portion and seat portion), thus making the attachment look less like a retrofit.

As regards claim 9, the reference to Johnson et al., while teaching that the basket may be made from a metal, fails to explicitly teach wire mesh. Wire mesh is very old and well known as a material for shopping cart baskets, and it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the basket taught by Johnson et al. as modified by McCue et al. from a wire mesh for the purpose of using a commonly available and traditional material for the basket.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. in view of McCue et al. and Jones et al. (US 5,289,936). The reference to Johnson et al. as modified by McCue et al. is discussed above and fails to teach the provision of the panel being selectively removable from the body. Jones et al. teach that it is well known to provide a cart having a seating area and basket with at least one panel portion (C, D; see, e.g., figs. 6, 25) as being removable and made from a plastic (note col. 8, lines 24-38), at least one of the panels facing a forward direction. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the front-facing panel taught by Johnson et al. as modified by McCue et al. as being removable, as taught by Jones et al., for the purpose of allowing the panel to be removed and replaced, for example to allow advertising display elements to be changed.

6. Claims 12-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCue et al. (US 6,513,817, filed 2/20/2002; provisional filing 2/23/2001) and Struzer (US 5,704,527). McCue et al. teach a shopping cart having a theme-shaped, molded plastic body (note at least col. 5, line 40; col. 6, lines 59-60) integrally formed so as to define a seat portion (proximate 24, 26, 27) which includes a front section (proximate 31) and rear section (proximate 25), and at least two lateral sides thereof (e.g.,

Art Unit: 3618

proximate 36), and a basket section (proximate 28) having a front (end of 12, proximate 25) and rear (proximate 31, 20), the seat having a back (24) positioned such that an occupant faces the front portion of the seat section; a non-movable basket (12) being constructed from a wire material and having a bottom portion (e.g., bottom of 12) lower than at least an upper portion of the seat back, the basket being covered on lateral sides by a basket portion (e.g., at 28) of the body (compare figures 2 and 3) and extending there-along (e.g., in a longitudinal direction), and positioned such that the basket front is proximate the front of the basket accommodating portion of the frame (e.g., 28, just rearwardly of 25), a frame (38) having at least 3 wheels (34/35) coupled thereto, further including a panel (40) coupled to the body, and taught to be mounted thereto, and as such understood to be demountable therefrom, which defines a front boundary of the seating portion, a rearward face of which faces the seating portion.

The reference to McCue et al. fails to teach the entertainment device is one of an audio device comprising a radio receiver or internal broadcast receiver, a video display coupled to a VCR or disk player, or a video display coupled to an audio/video receiver. Struzer teaches that it is old and well known to provide an entertainment device in the form of a radio, television, audio cassette player, CD player and/or video cassette player coupled to a wheeled transport vehicle such as a stroller. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the entertainment device disclosed by McCue as an audio device or video device, as suggested by Struzer, for the purpose of providing entertainment which (a) may be reprogrammed (e.g., through the use of different pre-recorded media) or (b) which is more familiar (i.e., a popular video) to the rider.

As regards claims 20 and 21, the reference to McCue et al. as modified by Struzer is discussed in detail above and fails to teach the specific percentage of coverage of the basket by the side walls of the basket portion of the body. When a general condition is disclosed, it is not beyond the skill of the ordinary practitioner to adjust the degree of the condition absent any teaching to the contrary, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the coverage of the basket by the side portions of the body from between 10%

Art Unit: 3618

and 40% for the purpose of adjusting the amount of material required to construct the body, or for adjusting the outer side appearance of the overall cart.

Allowable Subject Matter

7. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 31-37 are allowed.

Response to Comments

9. Applicant's comments, filed with the Request for Continued Examination and Amendment, have been carefully considered. As regards the changes to claim 1 and the panel portion, the examiner notes that the front facing surface taught by Johnson et al. forms a panel coupled to the body, to the breadth the limitation is set forth in the claims. As regards the combination of Johnson et al. and McCue et al., the examiner has not suggested a bodily incorporation of all elements of the cart of McCue et al. into Johnson et al., nor a relocating of the various elements, rather, that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the molded portion of Johnson et al. with a longitudinally extending further section (such as that which is taught by McCue et al.) which extends beyond the seat portion to cover at least a portion (in this case, the lower portions) of respective sides of the basket, as suggested by the longitudinally extending portion of the molded body of McCue et al., for the purpose of presenting a visually unified appearance. Such a combination as set forth in the statement of rejection does not destroy the function of the body structure of Johnson et al. As regards the combination of McCue et al. and Struzer, again with reference to the rejection set forth in the office action, it has been deemed obvious to provide the entertainment device suggested by McCue et al. as an audio device or video device, as suggested by Struzer. Applicant may desire to note that McCue already anticipates the provision of an entertainment device positioned such that it may be viewed by an occupant of McCue et al.'s seating portion, and already teaches it facing the seating area at a front thereof. The examiner is not relying in Struzer to somehow modify the position of McCue et al.'s entertainment device, nor is the examiner

Art Unit: 3618

suggesting that it would be obvious to take the entertainment device and place it in a portable carrier un-viewable by an occupant of the seating area, but rather Struzer is relied upon for a teaching that other entertainment devices may be used in a mobile manner, and the office action suggests only the provision of the entertainment device already taught by McCue as one of the other devices taught by Struzer, for the reasons set forth in the statement of rejection. If applicant believes that the nature of the proposed combination was not clearly set forth in the office action, applicant should clearly state such a belief. For applicant's convenience, the basis for the proposed combination is re-presented here:

"It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the entertainment device disclosed by McCue as an audio device or video device, as suggested by Struzer, for the purpose of providing entertainment which (a) may be reprogrammed (e.g., through the use of different pre-recorded media) or (b) which is more familiar (i.e., a popular video) to the rider."

Conclusion

10. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

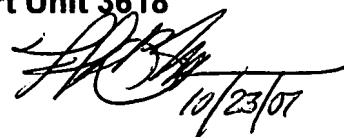
A response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
Art Unit 3618



10/23/07